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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.04.2017

CORAM :
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD).No.6745 of 2017
and
W.M.P.(MD).Nos.5317 and 5318 of 2017

S.Sakthivel Murugan,
Junior Assistant,
St.Mary's Higher Secondary School,
Vickramasingapuram,
Tirunelveli District-627 425. ... Petitioner

Vs.

1.The Director of School Education,
College Road, Chennai - 600 009.

2.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

3.The District Educational Officer,
Cheranmahedevi, Tirunelveli District.

4.The Correspondent,
St.Mary's Higher Secondary School,
Vickramasingapuram,
Tirunelveli District-627 425 .... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by the 3rd respondent District Education Officer in O.Mu.No.4098 dated 28.09.2016, quash the same and further direct the 3rd respondent District Educational Officer herein to approve the appointment of petitioner as Junior Assistant in the 4th respondent school namely St.Mary's Higher Secondary School, Vickramasingapuram, w.e.f., 20.07.2015 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Mr.P.Muthupandi

For Respondents : Mr.N.S.Karthikeyan,
Additional Government Pleader.

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O R D E R

The petitioner in this Writ Petition is the concerned Non-Teaching Staff who is working in the fourth respondent School.

2. The crucial fact whether the appointment was against sanctioned post or not was directed to be verified by the learned Additional Government Pleader and the learned Additional Government Pleader after getting instructions, has conceded the factual position that the persons to whom the approval is sought for are non-teaching staffs, who were appointed as against the sanctioned post. In this case the appointment is made in private school getting aid from the Government.

3. The question whether prior approval is required or not before appointing a non-teaching staff in a private aided institution has already been decided in favour of the petitioner holding that no prior permission is required. The attempt of the Government by restricting or preventing the private aided institution from making appointment as against sanctioned post was the subject matter of challenge in several writ petitions and this Court has consistently allowed all the writ petitions quashing the order refusing approval or other Government Orders or instructions preventing the private aided schools from making appointment on their own as against sanctioned post.

4. It is relevant to refer to the Division Bench judgment of this Court in the case of *The Manager, Concordia High and Higher Secondary School V. Tmt.S.Christy and others* reported in *2013 Writ L.R.691* where in it has been held as follows:

> "4. In considering the contentions as put forth in the Writ Petition, learned Single Judge pointed out to the judgment passed by this Court in W.A.Nos.93 and 94 of 2009 decided on 05.01.2010 that for any sanctioned post, no prior approval is necessary. In respect of proceedings nothing the availability of posts, the learned Single Judge pointed out that there is no necessity for prior approval. In any event, the appointment without getting approval could not be a ground for not considering the writ petitioner's plea".

5. A similar issue also arose for consideration in the case of *S.Rasheetha Banu V. State of Tamil Nadu, rep. by its Secretary to Government, Chennai and others* reported in *(2012) 4 MLJ 198.*

6. This Court has categorically held that the approval cannot be rejected on the ground that no prior permission was obtained before the appointment, if the appointment was against a sanctioned post in the private aided institution. The question of

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approval to the appointment of Non-Teaching Staff against the sanctioned post was considered by this Court in several cases and this Court has consistently taken the view that no prior permission is required before making appointment in various Non-Teaching posts in private aided institution. The conduct of respondents in passing orders against the judgment of this Court is also commented in subsequent orders of this Court.

7. In view of the proposition laid down by this Court which has now been well settled, this Court is inclined to allow this writ petition.

8. As a result this writ petition is allowed and the impugned order is set aside and the third respondent is directed to accord approval to the appointment of Non-Teaching Staff concerned with effect from the date of appointment with all monetary and other service benefits within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently the connected W.M.P.(MD) Nos.5317 and 5318 of 2017 are closed.

SD
ASST REGISTRAR (CS II)

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SUB ASST REGISTRAR

cmr/gsp

To
1.The Director of School Education,
College Road, Chennai - 600 009.

2.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

3.The District Educational Officer,
Cheranmahedevi, Tirunelveli District.

1CC TO MR. P. MUTHUPANDI, ADVOCATE SR: 52751

KK SKN RSK SAR 4/3P 5C

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25/04/2017

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